

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

WALTER RAGLIN,

Petitioner,

-vs-

BETTY MITCHELL, Warden,

Respondent.

:

Case No. 1:00-cv-767

:

District Judge Walter Herbert Rice
Chief Magistrate Judge Michael R. Merz

DECISION AND ORDER DENYING SECOND MOTION FOR NEW COUNSEL

This capital habeas corpus case is before the Court on Petitioner's second request for appointment of replacement counsel (Doc. No. 105). In denying Mr. Raglin's last Motion to replace counsel on September 21, 2006, the Court wrote:

The status of this case is that it is fully ripe for Judge Rice's consideration on Petitioner's Objections to the Magistrate Judge's Report and Recommendations and Supplemental Report and Recommendations. Thus the case has been fully litigated on the merits.

Mr. Raglin complains that his present counsel, James Owen, is "not presenting my death penalty case like a lawyer should be," but the only specific complaint he makes about Mr. Owen is that Mr. Owen had not sent him copies of requested papers in the case ("all present motions, briefs, and a copy of my trial transcripts, future motions, briefs that he plans on filing in my case") despite a request some two weeks prior to the request to replace Mr. Owen. Petitioner has not demonstrated that he has a need for the extraordinary number of copies he requests. Nor has he demonstrated that Mr. Owen has failed properly to represent him.

Nothing has changed in the status of the case in the last month and counsel have not been required to do anything. The case remains pending for decision by Judge Rice. Petitioner asserts that he has an absolute right to discharge counsel and that is true, but he does not have the right to insist on new counsel thereafter. Although Mr. Owens is a very competent capital defense attorney, an additional reason for not taking him off the case is that the entire budget set for this case by the Court of Appeals has been expended. While there are many other competent capital defense attorneys in Ohio who could take over the case, the Court doubts that any of them would be willing to do so for free and the Court cannot compel attorneys to work for free. *Mallard v. United States District Court*, 490 U.S. 296, 309, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989).

The request to appoint substitute counsel is DENIED. Petitioner's counsel shall provide him with a copy of this Decision and Order.

September 20, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge